



City of Santa Barbara
Airport Department

DATE: November 20, 2019
TO: Airport Commission
FROM: Henry Thompson
SUBJECT: Independent Commercial Activity on Airport Property

RECOMMENDATION

That Airport Commission:

- A. Adopt the Proposed Policy Change prohibiting Independent Commercial Service Providers including Flight Instruction on the Airport; and
- B. Update the SBA Minimum Standards.

OVERVIEW

Airport staff developed a proposed policy change for managing Independent Commercial activities at the Airport. This type of activity is defined as services provided by individuals at the Airport that do not hold an agreement with the Airport for a fixed place of business. Individuals currently performing these services include *Certified Flight Instructors, Mobile Aircraft Mechanics, Mobile Ground Support Equipment Mechanics, Aircraft Detailers, etc.* Currently individuals providing these services gain access to the Airport under escort or by tenant signatories authorizing unescorted access. In some instances, Independent Operators are security badged by the Airport under a historical practice of permitting such activities for a small fee. The revised policy would reverse and enhance the action of the Airport Commission on November 29, 2017, and change this historical precedent while generating significant interest from Airport users.

BACKGROUND

The Federal Aviation Administration (FAA) published a Final Policy in the Federal Register, effective April 4, 2016, which amended FAA Order 5190.B, FAA Airport Compliance Manual. The Amendment was related to the flying clubs and Airport Commercial Minimum Standards. A flying club is a kind of aviation collective whereby members of a club all own a share of one or more aircraft. Members pay a membership fee and a share of ongoing costs to maintain aircraft. In return, members can use the aircraft for a nominal cost. This FAA Amendment made changes regarding pilot instruction and mechanic services related to flying club aircraft. Prior to the federal rulemaking, flight instructors could not receive monetary compensation for providing instruction to flying club members unless they are, according to the FAA Order, a "lessee based on the airport who provides flight training".

With the change, Flight Instructors can now receive compensation, even though flying clubs are prohibited from marketing themselves as a business where you can learn to fly.

In response, Santa Barbara Airport proposed to modify its Minimum Standards to be consistent with these regulatory changes. While fees and badging policies are not included in the Airport's Minimum Standards, they were included in discussions to provide a more complete picture of proposed changes affecting Independent Flight Instructors at the Airport. Airport staff surveyed policies regarding Independent Flight Instructors at other airports in California. That survey found that most similar sized airports did not allow Independent Flight Instruction and those with flight instruction policies may not necessarily be in compliance with FAA policy. Because of past practice at SBA, Airport staff recommended allowing continued Independent Flight Instruction at an annual fee of \$2,400. The proposed fee was based on the small number of airports in the survey that did recognize Independent Flight Instructors and charged a fee to permit their services.

The Airport Commission General Aviation Subcommittee and Minimum Standards stakeholders met to review the FAA changes and proposed revisions to the Minimum Standards. Meetings were held on April 18, 2017, May 3, 2017, and September 13, 2017, where proposed changes were presented and discussed. Following the meetings Airport staff received a total of 32 written letters from interested parties. Based on comments and Commission input, especially related to the proposed \$2,400 annual fee's impact on part-time flight instructors, Airport staff accepted an Airport Commission negotiated \$200 annual fee for all Independent Flight Instructors and Independent Aircraft Detailers.

On November 20, 2017, the Airport Commission General Aviation Subcommittee recommended approval of the revised Minimum Standards to the Airport Commission. Airport Commission recommended approval of the Minimum Standards to City Council at its meeting on November 29, 2017. City Council adopted the revised Minimum Standards on December 12, 2017 (Resolution 17-115).

On November 20, 2018, Santa Barbara Airport received a letter from the FAA Airport Compliance Manager for the Western-Pacific Region. The letter stated the FAA had received a verbal complaint involving independent flight instruction at the Airport. The letter discussed AIP Grant Assurance 22, *Economic Nondiscrimination*, and suggests the Airport "review and revise [its] rules and standards to establish and maintain an equitable competitive environment in which tenant and non-tenant entities can do business without unfair advantage or unintended disadvantage." (See Attachment #1). Violation of grant assurances jeopardizes FAA Airport Improvement Program (AIP) grant funding.

The Complaint alleged that the recently implemented policy that addressed Independent Flight Instructors, Flight Schools and Flying Clubs was unfair and impacting the business of 'brick and mortar' flight schools. The FAA's analysis found that the Complaint had merit and that the Airport policy may have resulted in economic discrimination which is a violation of Airport grant assurances. The FAA has urged the Airport to address this issue before a Formal Complaint (Part 16) is filed which would likely result in a finding of non-

compliance by SBA. Such a finding would result in a freeze on all grant funding until the matter is resolved to the satisfaction of the FAA.

Since receiving the November 20, 2018, letter from the FAA, Airport staff have met with representatives from the Independent Flight Instructor community and flight schools regarding the issue, and for the past nine months staff has been working to develop a new proposed policy to address this FAA concern.

Several potential approaches were considered and vetted through FAA prior to staff making a final recommendation to the Airport Commission.

STATUS

Airport staff carefully examined the existing policy, the Complaint filed and the FAA letter resulting from the Complaint. In addition, surveys of other airports were conducted and staff consulted with the FAA on possible solutions.

Current Policy

Flight Schools

Today there are (2) 'brick and mortar' flight schools on the Airport that provide a host of services, including flight training and testing. These tenants hold lease agreements for space adjacent to the airfield that include appropriate insurance requirements and indemnification of the Airport. The fees they pay the Airport are based upon the size of the facility they are leasing.

Flying Clubs

Federal rules permit flying clubs to operate on the Airport provided a club meets the requirements for a non-profit organization and members equally share the costs to maintain the club aircraft. The Airport does not currently charge any fees to the flying clubs, however, they do lease space to park aircraft. The policy that permits flying club member Flight Instructors to provide instruction to flying club members is covered under a separate provision than provisions governing how Independent Flight Instructors may engage in for-profit commercial activities on the Airport.

Independent Flight Instructors

Independent Flight Instructors conduct initial and recurring flight training for pilots for a fee. The Airport has historically bound Independent Flight Instructors to a Commercial Activity Operating Permit, charged an annual fee of \$200.00 and required a Business License for the privilege to conduct business. The Airport has not required specific hold harmless agreements or required other forms of insurance to protect the City. In all likelihood, the number of Certified Flight Instructors providing instruction with or without compensation absent an Airport permit is significant, even though there are very few who conduct instruction as their primary source of income.

Other Independent Commercial Service Providers

Currently, there is no oversight or enforcement of other types of Independent Commercial Service providers. Most commonly, a service provider may access the Airport as badged by an FBO, and may also lease space from an FBO while providing services Airport-wide. There may be other completely unregulated service providers accessing the Airport to conduct business under escort by tenants, pilots and/or FBOs. This may represent a violation based on creation of an uneven playing field as compared to other commercial tenant operators on the Airport. Because there is no control of this activity, the City has risk exposure without appropriate indemnity and insurance to protect the Airport.

Proposed Policy Change

After reviewing existing policies for Commercial Service Activities and the resulting FAA Complaint, staff focused on the objective of developing a policy that addresses the FAA's concerns while avoiding other potential complaints from other Airport users. Several potential approaches were considered and vetted through FAA prior to staff making a final recommendation to Airport Commission (see Attachment #2). Additionally, the Airport initiated a request for public feedback related to this program from Airport Commissioners and interested stakeholders on November 8th, 2019.

These changes will not compromise safety in anyway as based pilots retain the ability to work with FAA Certificated Flight Instructors at established flight schools that are authorized to conduct business on the Airport. These flight schools provide the City of Santa Barbara the appropriate liability protections and are compliant with City of Santa Barbara Municipal Code (§)18.08.030 titled Business Activity. Alternatively, existing based FAA Certificated Flight Instructors have the option to create an authorized flight school that is in compliance with SBA's Minimum Standards.

Flight Schools/Flying Clubs/Independent Flight Instructors

The City of Santa Barbara Airport Department is recommending modifying permitted Independent Flight Instruction on the Airport. The intent of this change is to honor the value Airport leaseholders bring to the facility and attempt to equalize the price of providing services given a leaseholder's inherent overhead costs. Further, it is believed that having permitted Independent Flight Instruction is in conflict with Airport lessees and may be preventing new companies from viewing the Airport as a lucrative market, resulting in their decision not to bring their business offerings to SBA. It is not the intent of the Airport to eliminate flight instruction choice, but rather improve the Airport's ability to manage and enforce this activity. Flight instruction activity will be accommodated through the following means:

- Approved SBA flight schools
- Approved flying clubs operating in compliance with FAA Order 5190.B and associated final policy that is contained in FAA Docket No. FAA-2015-2022 titled

Petition of the Aircraft Owner and Pilots Association (AOPA) To Amend FAA Policy Concerning Flying Club Operations at Federally Obligated Airports

- Specific aircraft type ratings that may be required for onsite instruction, but not held by a local flight school, may be considered for escorted access given Airport concurrence and proof of meeting the established criteria

Other Independent Commercial Service Providers

It is believed that Independent Commercial Service Operators, when operating in direct competition with “brick and mortar” Airport leased facilities that meet all business requirements, may not be conducive to a fair and equal operating environment.

Should a service not be provided on Airport and the service is desired by a tenant, then Airport staff will evaluate the need to grant escorted access to the Independent Commercial Service Operator by that tenant. The evaluation will consist of the following criteria:

- Is the proposed Independent Commercial Service Operator’s business already being provided by an appropriately vested lessee of the Airport?
- Does the Independent Commercial Service Operator possess the appropriate insurance limits required by the City of Santa Barbara Risk Management Department for the services provided?
- Does the Independent Commercial Service Operator possess a City of Santa Barbara Business License?
- Is there a Hold Harmless Agreement in place as required by the City of Santa Barbara Attorney’s Office?

If the results of any of the previously criteria mentioned are in conflict, then the services will not be allowed to occur on Airport.

Enforcement

Any form of Independent Commercial Services that are conducted outside of the recommended updates to the Airport’s Minimum Standards, will be strictly prohibited. At the sole discretion of the Airport Director, Independent Operators or Airport badge holders found to be operating contrary to revised Minimum Standards, may be subject to immediate termination of operating and access privileges or other associated penalties. All violations shall be reported to the Security Operations Center for investigation.

Attachments:

- #1 - FAA Letter of Violation – Warning
- #2 - Comparison of Options